

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF CALIFORNIA

In re)	
SARFRAZ AHMED,)	Case No. 08-24862-C-7
Debtor,)	
_____)	
BRASHER'S SACRAMENTO AUTO)	Adv. Pro. No. 08-2375-C
AUCTION, INC.,)	
Plaintiff,)	
v.)	
SARFRAZ AHMED,)	<u>Trial Date:</u>
Defendant.)	DATE: December 5, 2008
_____)	TIME: 10:30 a.m.
)	DEPT: D

FINDINGS OF FACT AND CONCLUSIONS OF LAW

On December 5, 2008 the above-entitled matter came on for trial on Brasher's Sacramento Auto Auction, Inc.'s Complaint to Determine and Declare Debt Nondischargeable Pursuant to 11 U.S.C. Section 523(a)(2)(1)(4) and (a)(6) (the "Complaint"). Brady D. McLeod of The Miles Law Firm appeared on behalf of Brasher's Sacramento Auto Auction, Inc. ("Brasher's") and Sarfraz Ahmed ("Ahmed"), the defendant and debtor herein, appeared on his own behalf. The court having heard the testimony of the witnesses and the argument of the parties and having reviewed the documentary evidence, makes the following findings of fact and conclusions of law:

FINDINGS OF FACT

To the extent any finding of fact set forth herein is a conclusion of law, it is hereby incorporated into the Conclusions of Law section as if set forth in full.

1. The Complaint is brought in connection with Ahmed's case under Chapter 7 of the Bankruptcy Code, Case No. 08-24862, now pending in this court. This court has jurisdiction over the Complaint as a "core proceeding" pursuant to 28 U.S.C. §§ 157, 1334 and 1367 because it involves the dischargeability of the debt herein described.

2. The Complaint seeks to determine and declare the debt owed to Brasher's by Ahmed non-dischargeable pursuant to sections 523(a)(2), (a)(4) and (a)(6) of the Bankruptcy Code.

3. Brasher's is a corporation organized under the laws of the state of California and operates a vehicle auction in the city of Rio Linda, County of Sacramento, California and is a creditor of Ahmed.

4. Ahmed was at all times relevant herein a resident of the city of Gold River, County of Sacramento, California. At all relevant times Ahmed was a licensed California vehicle dealer and did business as Noble Auto Sales located in the city of Sacramento, County of Sacramento, California.

5. Ahmed controlled, dominated, and operated Noble Auto Sales as his individual business.

6. On January 30, 1995, defendant Ahmed entered into a "Dealer Flooring Agreement" (the "Agreement") with Brasher's. Under the Agreement, Ahmed was allowed to purchase vehicles from Brasher's and Ahmed was allowed to pay for the vehicles

1 when he sold them, or within ninety 90 days, whichever
2 occurred first. Ahmed was required to notify Brasher's
3 promptly upon the sale of any vehicle Ahmed had obtained from
4 Brasher's and to then immediately pay Brasher's for the
5 vehicle, whereupon Brasher's delivered the title to the
6 vehicle to Ahmed. While Brasher's allowed Ahmed to floor the
7 vehicles and place them on his lot, Brasher's retained the
8 title to each floored vehicle until Ahmed had sold the vehicle
9 and paid Brasher's the purchase price, whereupon Brasher's
10 would cause title to be transferred to Ahmed. (Plaintiff's
11 Exhibit Nos. 1 and 2; and trial testimony of Barry Larsen.)

12 7. During the time period from December 6, 2006 through
13 February 7, 2007, Ahmed obtained 29 vehicles from Brasher's
14 pursuant to the Agreement and thereafter failed to pay for
15 them. The total purchase price owed by Ahmed to Brasher's for
16 the 29 vehicles was \$393,879.80. (Plaintiff's Exhibit Nos. 1
17 and 3; and trial testimony of Barry Larsen.)

18 8. Some time prior to December 6, 2007 Ahmed formed a
19 relationship with Brasher's' employee, Kimberly Renfro
20 ("Renfro"), Brasher's vehicle flooring title clerk. On
21 occasions, Ahmed and Renfro would socialize together.
22 (Plaintiff's Exhibit No. 1; and trial testimony of Barry
23 Larsen; and trail testimony of Sarfraz Ahmed.)

24 9. At some time after Ahmed obtained the relevant 29
25 vehicles from Brasher's, Ahmed hatched a scheme with Renfro
26 whereby Renfro would cause the titles to the vehicles to be
27 transferred to Ahmed, before Ahmed had sold the vehicles and
28 before Ahmed had paid to Brasher's the purchase price for the

1 respective vehicles. Brasher's had no knowledge and did not
2 consent to Renfro's transfer of the relevant titles to Ahmed
3 before he had paid Brasher's the full purchase price for the
4 vehicles. Accordingly, Ahmed wrongfully obtained possession
5 of the titles to the vehicles. (Plaintiff's Exhibit Nos. 1
6 and 3; and trial testimony of Barry Larsen.)

7 10. After wrongfully obtaining the vehicle titles, and
8 during the time period from December 2006 through April 2007,
9 Ahmed marketed and retailed 23 of the 29 vehicles to
10 unsuspecting consumers without Brasher's' knowledge. In April
11 2007, in a conversation with Mr. Barry Larsen, Brasher's'
12 collection manager, Ahmed admitted that he had a gambling
13 problem and that it was "out of control" and that Ahmed was
14 aware that he had wrongfully obtained the titles to the
15 vehicles from Brasher's with the assistance of Renfro, sold
16 the vehicles, and then converted the funds from the sales of
17 the vehicles to his own personal use to gamble and pay other
18 expenses. (Plaintiff's Exhibit Nos. 1, 3, and 11; and trial
19 testimony of Barry Larsen; trail testimony of Sarfraz Ahmed.)

20 11. In that same month of April 2007, Renfro's
21 employment was terminated by Brasher's because of her
22 involvement in the scheme to deliver vehicle titles to Ahmed
23 before Brasher's had been paid the purchase price of the
24 vehicles. (Plaintiff's Exhibit No. 1; and trial testimony of
25 Barry Larsen; trail testimony of Sarfraz Ahmed.)

26 12. On August 17, 2007, Brasher's recovered twelve (12)
27 vehicles from Ahmed, six (6) of which were vehicles to which
28 Ahmed had wrongfully obtained titles: 2001 Nissan Altima, 2004

1 Honda Accord, 2002 Mitsubishi Eclipse Spyder, 2005 Ford F-150,
2 2003 Ford F-150, and 2001 Ford Explorer. (Plaintiff's Exhibit
3 Nos. 8 Vehicle Nos. 1, 2, 4, 5, 9, and 12; Exhibit No. 3,
4 Vehicle Nos. 23, 27, 28, and 29, Exhibit No. 4; and trial
5 testimony of Barry Larsen.) In addition, Ahmed turned over to
6 Brasher's two (2) additional vehicles which he owned: 1999
7 Chevy Silverado 1500 and 1997 Honda Civic. These eight (8)
8 vehicles were resold through Brasher's to other dealers and
9 the amount of the sale was credited to the amount owed
10 Brasher's by Ahmed for the 29 vehicles, together with some
11 other account adjustments (dealer reserve), reducing the total
12 amount owed Brasher's by Ahmed for the vehicles from
13 \$393,879.80 to \$369,746.57. (Plaintiff's Exhibit Nos. 1, 3,
14 8, 9, and 11; and trial testimony of Barry Larsen.)

15 13. One of the vehicles to which Ahmed wrongfully
16 obtained title was the 2002 BMW 745i, which Ahmed sold to
17 himself, financing the sale through a local credit union, but
18 then failed to pay Brasher's for the vehicle. (Plaintiff's
19 Exhibit Nos. 1, 3, and 11; and trial testimony of Barry
20 Larsen.)

21 14. Brasher's only recovered six (6) of the 29 vehicles.
22 The remaining 23 vehicles were retailed to unsuspecting
23 customers by Ahmed. (Plaintiff's Exhibit Nos. 1, 3, 8, 9, and
24 11; and trial testimony of Barry Larsen; trail testimony of
25 Sarfraz Ahmed.)

26 15. Ahmed did not pay Brasher's for any of the 29
27 vehicles. The payments Ahmed did make to Brasher's were for
28 vehicles that Ahmed had previously purchased from Brasher's,

1 none of the vehicles are at issue in this proceeding. In
2 addition, Ahmed was credited for curtailments made on his
3 purchase of vehicles from Brasher's. (Plaintiff's Exhibit
4 Nos. 3 and 10; and trial testimony of Barry Larsen; and trail
5 testimony of Sarfraz Ahmed.)

6 CONCLUSIONS OF LAW

7 To the extent any conclusion of law set forth herein is a
8 finding of fact, it is hereby incorporated into the Findings
9 of Fact section as if set forth in full.

10 A. Larceny - 523(a)(4)

11 16. Ahmed wrongfully obtained 29 vehicle titles from
12 Brasher's without paying Brasher's the \$393,8799.80 he owed
13 for the vehicles he obtained from Brasher's. Although the
14 vehicles may have been lawfully floored when they were
15 delivered to Ahmed by Brasher's, the original and unlawful
16 taking of Brasher's property occurred when Ahmed knowingly and
17 wrongfully obtained the titles to the vehicles. When Ahmed
18 thereafter sold 23 of the vehicles to unsuspecting consumers
19 and diverted the proceeds from the sales to his own use,
20 Ahmed committed larceny. Larceny is the fraudulent taking and
21 carrying away of another's property with the intent of of
22 converting the property for the taker's use without the
23 owner's consent. In re Montes, 177 BR 325, 331 (Bd.C.D.Cal.
24 1994). That is just what Ahmed did when he obtained by
25 unlawful scheme the vehicle titles without Brasher's'
26 knowledge or consent. The damages caused to Brasher's
27 resulting from Ahmed's larceny is \$369,746.57, which is the
28 amount that Ahmed owes to Brasher's for the vehicles. After

1 appropriate credit, Brasher's claim at the time of trial is
2 only for \$350,000.00 and this is the amount the court finds
3 non-dischargeable under 11 U.S.C. § 523(a)(4) because the debt
4 is one for larceny.

5 **B. Willful and Malicious Injury - 523(a)(6)**

6 17. At all relevant times, Ahmed acted in his business
7 capacity as a licensed automobile dealer. Using his business
8 capacity as a licensed automobile dealer. Using his business
9 relationship with Brasher's, forged over a 13 year period,
10 Ahmed hatched a scheme with the secret assistance of one of
11 Brasher's employees whereby Ahmed wrongfully obtained titles
12 to 29 vehicles without first paying for them. Ahmed then
13 aggressively marketed and sold the vehicles, transferred
14 ownership to unsuspecting consumers, and retained the funds
15 from the sale of the vehicles, devoting the funds to his own
16 personal use.

17 18. An injury is "willful" when the creditor shows that
18 the debtor believed the injury was substantially certain to
19 occur as a result of the debtor's conduct. In re Jercich, 238
20 F.3d 1202, 1208 (9th Cir. 2001). From the documentary and
21 testimonial evidence, the court concludes that Ahmed knew
22 Brasher's would suffer injury if Brasher's was not paid for
23 the vehicles that Ahmed sold and titles to which Ahmed could
24 transfer to Ahmed's buyers without first paying Brasher's.
25 The court accordingly finds that Ahmed did willfully injure
26 Brasher's.

27 19. A "malicious injury" requires a wrongful act, done
28 intentionally, that necessarily causes injury, and that is

1 committed without just cause or excuse. Jercich, at 1209; In
2 re Thiara, 285 B.R. 420, 427 (9th Cir. BAP 2002); In re Oari,
3 357 B.R. 793, 798 (Bk.N.D.Cal. 2006).

4 20. Ahmed wrongfully obtained titles to 29 vehicles. He
5 did this intentionally, by way of a scheme with an employee of
6 Brasher's, without Brasher's' knowledge or consent. When
7 Ahmed thereafter sold the vehicles, transferring title to the
8 buyers, he knew that Brasher's would necessarily thereby
9 suffer injury. Ahmed's acts were in direct violation of the
10 Agreement, and were done by Ahmed without any just cause or
11 excuse; in fact, Ahmed stated that he did it to pay for his
12 gambling. The court finds, then, that Ahmed did willfully and
13 maliciously injure Brasher's.

14 21. The value of the injury suffered by Brasher's is the
15 amount Ahmed owed Brasher's for the vehicles to which Ahmed
16 unlawfully obtained title and thereafter sold to consumers,
17 leaving Brasher's with its sole recourse to Ahmed. The value
18 of the willful and malicious injury Ahmed caused Brasher's to
19 suffer was shown at trial to be \$350,000.00. The court finds
20 the debt to be nondischargeable pursuant to 11 U.S.C. §
21 523(a)(6) because it is a debt for willful and malicious
22 injury.

23 **C. Fraud - 523(a)(2)**

24 22. The elements for a fraud cause of action under 11
25 U.S.C. § 523(a)(2) are: (1) the debtor made representations to
26 the creditor; (2) the debtor knew the representations were
27 false at the time he or she made them; (3) the debtor made the
28 representations with the intent and purpose of deceiving the

1 creditor; (4) the creditor relied on the representations; and
2 (5) the creditor sustained the alleged loss and damages as a
3 proximate result of the representations. In re Jung Sup Lee,
4 335 B.R. 130 (9th Cir. BAP 2005).

5 23. The court finds and concludes that Brasher's has
6 failed to establish the elements required to make Ahmed's debt
7 to Brasher's non-dischargeable under 11 U.S.C. § 523(a)(2).

8 **CONCLUSION**

9 For the reasons stated herein, the court finds Ahmed's
10 debt in the sum of \$350,000.00 owed to Brasher's,
11 nondischargeable under § 523(a)(4) and (c)(6) and grants a
12 money judgment in the principal amount of \$350,000.00.
13 Judgment will be entered accordingly.

14
15 Dated:

16 DEC 23 2008

17 
18 ROBERT S. BARDWIL
19 UNITED STATES BANKRUPTCY JUDGE
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CERTIFICATE OF MAILING

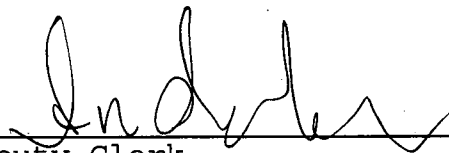
I, Andrea Lovgren, in the performance of my duties as Deputy Clerk to the Honorable Robert S. Bardwil, mailed by ordinary mail a true copy of the attached document to each of the parties listed below:

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DATE: DEC 23 2008


Deputy Clerk